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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,928	01/09/2006	Christoph Herrmann	DE030245	3779
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/563,928

**Applicant(s)**

HERRMANN ET AL.

**Examiner**

MOHAMMAD ANWAR

**Art Unit**

4125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because Figures 1-3 should be labeled with descriptive legends such as MS (mobile station), GSN (Gigabyte System Network). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 9 and 12 are objected to because of the following informalities:

In claim 9 line 1 recites "The system of claim 1", however, claim 1 recites a method, whereas claim 8 recites a system. Therefore, it is suggested to amend claim 9 to read "The method of claim 1" or "The system of claim 8".

In claim 12 line 9 recites "a new data packet" which seems to refer to "a new data packet" in claim 12 line 6. If this is true it is suggested to change "a new data packet" to ----the new data packet----.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4 lines 2-3 recites "the complete data" which has no antecedent basis.

In claim 10 line 10 recites "the first confirmation message" which has no antecedent basis.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**For claim 12**, the claim is directed to a computer program per se, which is non-statutory subject matter. The claim recites computer program, the claim fails to mention that a "computer readable medium" is stored with, encoded with, or embodied with "computer executable instructions" and without these components the functionality of the claimed invention can not be carried out.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 5, 8, 10-12 are rejected under 35 U.S.C. 102(e) as being unpatentable by Loguinov (20030023746).

**For claims 1 & 8**, Loguinov discloses wherein an indicator is sent along with each data packet of the data packets (see paragraph 23 line 13); wherein the indicator indicates whether the respective data packet is a new data packet or a re-sent data packet (see figure 4 (b), paragraph 16 lines 1-3); wherein, when the receiver receives a data packet with an error, the receiver sends a first confirmation message to the

transmitter (see paragraph 23 lines 15-18); wherein, when the receiver decodes a first data packet without an error, which data packet was sent along with the indicator indicating that the first data packet is a new data packet after the receiver has sent a first confirmation message with respect to a second data packet (see paragraph 23 line 19), the receiver sends a second confirmation message to the transmitter (see paragraph 23 line 25); wherein the second confirmation message tells the transmitter to re-send the second data packet (see paragraph 24 lines 1-21).

**For claim 2**, Loguinov discloses wherein when the receiver receives an error-free data packet, the receiver send a third confirmation message to the transmitter (see paragraph 27 lines 55-56).

**For claim 5**, Loguinov discloses wherein, instead of resending the second data packet, the transmitter ignores the second confirmation message and send a new third packet (see Figure 4a paragraph 15 lines 1-3).

**For claim 10**, Loguinov discloses wherein the base station comprises a transmitter for transmitting data packets to a receiver of the mobile radio communication system (see paragraph 2 lines 1-5); wherein the transmitter is adapted to send an indicator along with each data packet of the data packets (see paragraph 23 line 13); wherein the indicator indicates whether the respective data packet is a new data packet or a resent data packet (see paragraph 23 line 19); wherein, when the transmitter decodes a second confirmation message from the receiver which indicates that the receiver decoded a first data packet without an error (see Figure 1 a, paragraph 4 lines 8-17), which data packet was sent along with the indicator indicating that the first data

packet is a new data packet after the receiver has sent a first confirmation message with respect to a second data packet (see paragraph 23 line 19), the first confirmation message indicating the decoding of the second data packet with an error, the transmitter is adapted to re-send the second data packet (see paragraph 24 lines 1-21).

**For claim 11**, Loguinov discloses mobile subscriber station for a mobile radio communication system (see paragraph 20 lines 4-8), wherein the mobile subscriber station comprises a receiver for receiving data packets from a transmitter of the mobile radio communication system (see paragraph 2 lines 1-5), wherein the transmitter sends an indicator along with each data packet of the data packets (see paragraph 23 line 13); wherein the indicator indicates whether the respective data packet is a new data packet or a re-sent data packet (see paragraph 23 line 19); wherein, when the receiver decodes a data packet with an error, the receiver is adapted to send a first confirmation message to the transmitter (see paragraph 23 lines 15-18); wherein, when the receiver decodes a first data packet without an error (see Figure 1 a, paragraph 4 lines 8-17), which data packet was sent along with the indicator indicating that the first data packet is a new data packet after the receiver has sent a first confirmation message with respect to a second data packet (see paragraph 23 line 19), the receiver is adapted to send a second confirmation message to the transmitter (see paragraph 23 line 25); wherein the second confirmation message tells the transmitter to re-send the second data packet (see paragraph 24 lines 1-21).

**For claim 12**, Loguinov discloses computer program for controlling a transmission of data packets from a transmitter to a receiver of a mobile radio

communication system (see paragraph 20 line 13), wherein, when the computer program is executed on the mobile radio communication system, the computer program causes that (see paragraph 20 lines 11-16): the transmitter sends an indicator along with each data packet of the data packets (see paragraph 23 line 13); wherein the indicator indicates whether the respective data packet is a new data packet or a re-sent data packet (see figure 4 (b), paragraph 16 lines 1-3); when the receiver decodes a data packet with an error, the receiver sends a first confirmation message to the transmitter (see paragraph 23 lines 15-18); when the receiver decodes a first data packet without an error (see Figure 1 a, paragraph 4 lines 8-17), which data packet was sent along with the indicator indicating that the first data packet is a new data packet after the receiver has sent a first confirmation message with respect to a second data packet (see paragraph 23 line 19), the receiver sends a second confirmation message to the transmitter (see paragraph 23 line 25); and the transmitter re-sends the second data packet upon reception of the second confirmation message (see paragraph 24 lines 1-21).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loguinov.

**For claim 3**, Loguinov discloses all the subject matter but fails to mention wherein the second data packet is re-sent without data. However, examiner takes official notice that it is well known in the skilled art to send null packet. Thus, it would have been obvious to one ordinary skill in the art to include sending packets with no data into Loguinov packet acknowledgement scheme. The method can be implemented in the packet transmission unit. The motivation of doing this is to provide error free data transmission.

**For claim 6**, Loguinov discloses all the subject matter but fails to mention wherein the indicator has a length of 1 bit. However, in this case, the reference teaches all of the essential elements of the claim except wherein the indicator has a length of 1 bit. Further, it is well known in the art that when all of the essential elements of the claim except integration of parts are found in the reference, the mere unity of parts is not considered to be an inventive concept. In re Lockhart, 90 USPQ 214 (CCPA 1951), In re Murray, 19 C.C.P.A. 739, 53 F.2d 541, 11 USPQ 155; In re Zabel et al., 38 C.C.P.A. 832, 186 F.2d 735, 88 USPQ 367. Accordingly, at the time of the invention it would have

been obvious to one of ordinary skill in the arts to set the length of indicator bit to 1, since it is well known in the art that when all of the essential elements of the claim except integration of parts are found in the reference, the mere unity of parts is not considered to be an inventive concept.

12. Claims 4, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loguinov in view of Dottling et al. (7249303).

**For claim 4**, Loguinov discloses all the subject matter but fails to mention wherein the second data packet is re-sent with one of a part of the data originally included in the second data packet and the complete data originally included in the second data packet. However, Dottling et al. from a similar field of endeavor disclose wherein the second data packet is re-sent with one of a part of the data originally included in the second data packet and the complete data originally included in the second data packet (see column 1 lines 39-47). Thus it, would have been obvious to one ordinary skill in the art at the time invention was made to include Dottling et al. combination of data in a packet scheme into Loguinov packet transmission scheme. The method can be implemented in the packet transmission and receiving unit. The motivation of doing this is to reduce the bandwidth.

**For claim 7**, Loguinov discloses all the subject matter but fails to mention wherein the method is an extension of the HARQ protocol in UMTS, and wherein the indicator is sent via the High Speed Shared Control Channel of UMTS. However, Dottling et al. from a similar field of endeavor disclose wherein the method is an

extension of the HARQ protocol in UMTS, and wherein the indicator is sent via the High Speed Shared Control Channel of UMTS (see column 3 lines 15-17, column 10 lines 11-20). Thus, it would have been obvious to one ordinary skill in the art at the time of invention was made to include Dotling et al. hybrid ARQ and UMTS scheme into Loguinov packet transmission scheme. The method can be implemented in the hardware and software. The motivation of doing this is to provide error correction and high speed data transfer.

**For claim 9**, Loguinov discloses all the subject matter but fails to mention wherein the system is a UMTS mobile telecommunication system; and wherein the indicator is sent via the High Speed Shared Control Channel of UMTS. Dotling et al. from a similar field of endeavor disclose wherein the method is an extension of the HARQ protocol in UMTS, and wherein the indicator is sent via the High Speed Shared Control Channel of UMTS (see column 3 lines 15-17, column 10 lines 11-20). Thus, it would have been obvious to one ordinary skill in the art at the time of invention was made to include Dotling et al. UMTS scheme into Loguinov packet transmission scheme. The method can be implemented in the hardware. The motivation of doing this is to provide high speed data transfer.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sabaa et al. (6389016) and Belanger (5717688).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD ANWAR whose telephone number is (571)270-5641. The examiner can normally be reached on Monday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang Ton can be reached on 571-272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MOHAMMAD ANWAR  
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